PANEL OF CHAIRMEN.

President: Under Rule 3 (1) of the Legislative Rules, I nominate Mr. K. K. Kuruvilla and Mr. G. Narayana Aiyar on the Panel of Chairmen for this session of the Council.

NOTICE OF ADJOURNMENT MOTION.

President: I have received notice of a motion for the adjournment of the business of the House to discuss a definite matter of urgent public importance, *viz.*, the grave and alarming situation caused by the outbreak of malaria in a virulent epidemic form in Perunkadavila and other western pakuthies of Neyyattinkara taluk and some of the pakuthies of Vilavankod, Kalkulam and Nedumangad taluks adjoining the area.

I hold that the motion is in order. I ask the House whether the member has the leave of the House to make the motion.

As no objection has been raised, I take it that leave has been granted. The motion will be taken up this afternoon.

POINT OF ORDER.

Mr. Nedumangad R. Kesavan Nair: Since we met last, Mr. P. I. Simon has been appointed as a Government Pleader. Rule 12 of the Sri Chitra State Council Manual lays down:

> "An official shall not be qualified for election as member of either Chamber of the Legislature;
> and, if any non-official member of either Chamber accepts office in the service of Our Government, his seat in the Chamber shall become vacant."

The point of order that I now raise is whether Mr. P. I. Simon, an elected non-official member of this Chamber who has now accepted office under the Government as a Government Pleader, does not cease to be a member of this House. If he continues to be a non-official member, I doubt very much whether the privilege of this House, to have a non-official majority of 22 members, would not be infringed.

Mr. Kayalam Paramesvaran Pillai: Sir, the legal provision that has to be considered in deciding this question is Section 11 of the Legislative Reforms Regulation of 1108 which has already been referred to by Mr. Kesavan Nair. It says firstly:

> "An official shall not be qualified for election as member of either Chamber of the Legislature,"

And then it ads that

> "if any non-official member of either Chamber accepts office in the service of Our Government his seat in the Chamber shall become vacant."

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The questio that now arises for decision is what exactly is the meaning of the expression 'accepting office under Government'. Now, in interpreting this Section, the two parts have to be read together, one being but a corollary of the other. If so read, "accepting office under Government" must be interpreted as meaning "becoming an official", and the question is whether Mr. Simon has become an official. The terms 'official' and 'non-official' have been defined in a set of rules issued on the 29th April 1933, and published at page 111 of the Manual. The following is the relevant provision there :

> "The holder of any office in the civil or military service of Government, if the office is one which does not involve both the following incidents, namely, that the incumbent
> (*a*) is a whole time servant of Government, and
> (*b*) is remunerated either by salary or fees shall not be treated as an official" etc

Having regard to these rules, has Mr. Simon become now an official ? That is the real question. Under the terms of his appointment as a Government Pleader, he is *not* a whole-time servant of Government, in that he is entitled to take up private work. It may be mentioned too as an interesting point that the tenure of the Government Pleaders has been completely changed recently. None of them is now entitled to any pension and they hold office only for five years at a time. This means that the Government Pleader is paid but a fee or retainer only for the provisional work that he does for Government. In order that any person may be an official two conditions have to be satisfied, namely, one, that he should be a whole-time servant of Government and, two, that he should be remunerated by Government.

Mr. Nedumangad R. Kesavan Nair : Is he not remunerated by Government ?

Mr. Kayalam Paramesvaran Pillai : Yes ; but that is only one of the conditions. But the conditions in sub-clauses, (*a*) and (*b*) must co-exist if he shall be deemed an official.

Mr. Kochikali P. Balakrishnan Tampi : Are these Government Pleaders bound by the T. S. R. ?

Mr. Kayalam Paramesvaran Pillai : No, they are bound by the terms of their appointment. However, the question is whether under the Non-official Definition Rules, Mr. Simon is an official or not. There can be little doubt on that point. He is clearly a non-official only and so Mr. Simon has not vacated his seat.

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President: As the question has been raised as a point of order, I must give my ruling. The question has been considered not only here but elsewhere. In fact, I may mention, it was considered in the case of the person who now occupies the Presidentship of this Chamber even 16 years ago. He was then Advocate General of the Presidency of Madras. The question arose whether, as Advocate General, he was an official of the Government of Madras. His pay was Rs. 1,800 a month, and his position was naturally very important in the official hierarchy. It was decided, after reference to the highest authority in the Empire, that he was not an official. His salary was regarded as retainer paid to him. It was open to him to stand for election, and even to vote against the Government if he liked. And, as a matter of fact the present President of this Council, on two important Government measures, voted against the Madras Government. He was the only official to vote against the Religious Endowment Bill; and it was then that the question was raised whether the Advocate General could vote against the Government. It was held that lawyers who accepted the posts of Government Pleaders were not officials of the Government since their posts were not pensionable and since only their services were retained by the Government. The position is the same here also, at present, in regard to our Government Pleaders.

I therefore rule that Mr. Simon can continue to occupy the position as an elected non-official member of this House.

REGULATION ASSENTED TO BY HIS HIGHNESS THE MAHARAJA.

Secretary: I beg to report that the Travancore General Clauses Regulation (Amendment) Bill received the assent of His Highness the Maharaja on the 14th August 1937.

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